IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 442 OF 2004.

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Mr. G.S. Godbole for the appellant.

Mr. R.S.Apte, i/by Mr. M.S. Lagu for respondent.

CORAM : ANOOP V. MOHTA, J.
DATED : 5th July, 2007

P.C.

1. Both the Courts came to the conclusion based on the material on record that the appellant/ plaintiff failed to prove that he is a natural born son of deceased Babu who had executed the deed of adoption on 02/05/1970 at Exh.68 in question. The adoption deed as referred by both the courts clearly show the statement of the deceased Babu that he had no son.

2. The submission, and even otherwise, the case put up by the

plaintiff to challenge the said adoption deed, in view of the fact that (a) Babu is not alive (b) there is no contra-material to justify the statement as recorded in the said deed of adoption has no force. The conclusion, therefore, as arrived by both the courts by dismissing the suit as well as appeal cannot be said to be incorrect.

3. The learned counsel appearing for the appellant (plaintiff) basically contended that there was an application (Exhibit 20) under Order 41 Rule 27 of CPC, filed after argument in appeal was over, to take place on record the extract of the Birth Register of the appellant showing son of the Babu, which goes to the root of the matter as the adoption deed in question could not have been sustained. The learned

Judge after considering the material on record and the application as filed, rejected the same. Therefore, as contended, as there was no opportunity available to the appellant to challenge even the said order has no force.

4. First of all I am not impressed by the submission in view of the fact that admittedly there was no amendment made on this material averments which according to them goes to the root of the matter. The averments / pleas made for the first time in the application (Exh. 20) are as under:-

. "Appellant's name is shown as Yashwant in the birth register but subsequently he was named as Ashok."

5. These averments for the first time in such application, at such

late stage are not sufficient to consider the case of the appellant/ plaintiff.

6. Even otherwise, therefore, in absence of any submissions raised at appropriate time, the Court is right in coming to the conclusion and in not taking such documents on record. Such application and even the pleas as raised without amending the plaint, just cannot be taken note for the first time in the Second Appeal again.

7. The reasoning on the point of limitation as observed by the Courts also, goes against the appellant.

8. In view of this, I am not inclined to interfere with the findings of the Courts below. The Second Appeal is therefore, dismissed, as there is no

substantial question of law involved.

9. The learned counsel appearing for the appellant makes a submission that interim order as granted by this Court on 17/03/2004 be continued for further eight weeks. Considering the facts and circumstances of the case, I am inclined to accept the said submission though opposed by the learned counsel appearing for the respondent. The interim order as granted to continue for further eight weeks.

[ANOOP V. MOHTA, J.]